United States Senate
Republican Policy Committee
Jon Kyl, Chairman
Lawrence Willcox, Staff Director
347 Russell Senate Office Building
Washington, DC 20510
202-224-2946
http://rpc.senate.gov

February 27, 2006

Labor Unions Seek to End Secret-Ballot Elections, the Cornerstone of Democracy

Executive Summary

- The National Labor Relations Act gives private-sector workers the right to join or form a union and to bargain collectively over wages, hours and working conditions. Before a union may be acknowledged to represent workers, it must demonstrate that it has the support of a majority of workers in the bargaining unit.

- Historically, the decision as to whether a union will serve as the bargaining representative of a group of employees is made through a secret-ballot election overseen by the National Labor Relations Board.

- As fewer employees have chosen unions via the traditional secret-ballot election, organized labor has adopted a new tactic – card-check organizing. This alternative bypasses an election and instead allows for the recognition of the union once it presents authorization cards signed by a majority of employees being sought to organize. To better their chances of organizing new members, unions seek to obtain "neutrality agreements" with employers, and sometimes also resort to "corporate campaigns" to pressure employers.

- Organized labor's new tactic has proven successful. One study found the unions had a success rate of 78 percent when they used card-check authorization, and a success rate of 86 percent when a neutrality agreement was combined with card-check authorization, compared to a union success rate of 48 percent when a secret-ballot election was conducted.

- Senator Kennedy has introduced legislation (S. 842) that would solidify organized labor's new tactic. It would require the National Labor Relations Board to certify a union – and prohibit a secret-ballot election – if presented with signed authorization cards from a majority of employees that the union is seeking to organize.

- The secret-ballot election is the fairest way to guarantee the rights of employees to freely choose whether or not to be represented by a union. It allows for a private, confidential vote by employees, based on the principles of the American system of democracy. The law should not be changed simply to ensure more union victories.

Introduction

The secret-ballot election is the cornerstone of American democracy. In the case of labor union representation of employees in the workplace, the secret ballot election, overseen by the National Labor Relations Board (NLRB) allows employees to cast their vote confidentially, without fear of peer pressure or coercion from unions or employers. And while such elections to determine the will of the employees is preferable, current law also allows employers the option of bypassing such elections and recognizing the union once presented with authorization cards signed by a majority of employees being sought to organize. However, NLRB case law is full of examples in which the use of means other than the secret ballot has been challenged on the basis of coercion, misrepresentation, forgery, fraud, peer pressure, and promised benefits.

Unions are turning to alternatives to the secret-ballot election with increasing frequency.[1] Many observers speculate that this is because fewer employees are choosing unions in secret-ballot elections.[2] Legislation sponsored by Senator Edward Kennedy would solidify organized labor's new strategy to increase its share of the workforce by cutting out the fairness and confidentiality afforded workers with the secret-ballot election.

An attempt to boost union membership should not allow the elimination of the long-standing system of secret-ballot elections overseen by the NLRB. Democracy in the workplace should be maintained, and the decision to allow a union to represent employees unequivocally left in the hands of the employees.

Current Law Assures Democracy for Employees in the Workplace

The National Labor Relations Act (NLRA) gives private-sector workers the right to join or form a labor union and to bargain collectively over wages, hours, and working conditions.[3] Unions exist to permit workers to present a united front to their employers and to protect the economic interests of the workers they represent.[4] For these reasons, the NLRA insists that a union demonstrate it has the support of a majority of workers in any bargaining unit before it may be acknowledged as the representative of those workers.

Historically, under the NLRA, the decision as to whether a union will serve as the bargaining representative of a group of employees is made through a secret ballot. The National Labor Relations Board (NLRB) is the independent, federal agency charged with the administration and enforcement of the NLRA. Under these NLRB procedures dating back to the

[1] Brent Garren, Senior Associate General Counsel of UNITE HERE, in testimony before the House Subcommittee on Employer-Employee Relations of the Committee on Education and the Workforce, September 30, 2004.
[2] Charles I. Cohen, Senior Partner, Morgan, Lewis and Bockius LLP (and former member of the NLRB), in testimony before the Subcommittee on Employer-Employee Relations of the House Committee on Education and the Workforce, April 22, 2004.
[3] Congressional Research Service (CRS), "Labor Union Recognition Procedures: Use of Secret Ballots and Card Checks," CRS Report to Congress RL32930, May 23, 2005.
[4] Paul Kersey, "Congress Should Protect Secret-Ballot Union Representation Elections," The Heritage Foundation, November 12, 2004.

1940s, a union representation election typically takes place after a union has demonstrated to the NLRB that at least 30 percent of those whom it is seeking to represent wish to have an election.[5] The NLRB regards the 30-percent level as a sufficient demonstration of a "showing of interest" to hold an election. This interest is generally demonstrated by employees signing union authorization cards that indicate a desire by the employee to be represented by the union or to have an election to determine the issue.[6] When an election is held, it is supervised by the NLRB. The NLRB ensures that employees may cast their ballots in a confidential manner, free of coercion by either management or the union.[7] Employees or a union may petition the NLRB for an election.[8]

Exception to the Rule

The NLRA allows an exception to the standard process described above in which an election may be considered "superfluous" because it is clear to the employer that the union enjoys the support of a majority of the employees.[9] Under this exception, when presented with union authorization cards by more than 50 percent of the employees of a bargaining unit, the employer may voluntarily recognize the union. This has been tolerated under the law, despite the absence of the numerous safeguards that are provided by the secret-ballot election supervised by the NLRB.

Although current law permits voluntary recognition by employers based on union authorization cards that have been signed by a majority of the employees, both the NLRB and the Supreme Court have long recognized that a Board-conducted secret-ballot election is "the most satisfactory, indeed preferred method" of ascertaining employee support for a union.[10] In fact, in a landmark 1969 case involving a union dispute at a packing company, the Supreme Court affirmed that cards are "admittedly inferior to the election process."[11] Other courts have expressed similar views:

- "It is beyond dispute that secret election is a more accurate reflection of the employees' true desires than a check of authorization cards collected at the behest of a union organizer."[12]
- "It would be difficult to imagine a more unreliable method of ascertaining the real wishes of employees than a 'card check,' unless it were an employer's request for an open show of hands. The one is no more reliable than the other…"[13]

---

[5] HR Policy Association (HRPA), "Mistitled 'Employee Free Choice' Would Strip Workers of Secret Ballot in Union Representation Decisions," January 29, 2004.
[6] Note: The wording on authorization cards varies amongst union campaigns.
[7] Daniel V. Yager, Vice President and General Counsel of the Labor Policy Association, in testimony before the House Subcommittee on Workforce Protections of the Committee on Education and the Workforce, July 23, 2002.
[8] CRS.
[9] Yager.
[10] John N. Raudabaugh, shareholder at Butzel Long (and former member of the NLRB), in testimony before the House Subcommittee on Employer-Employee Relations of the Committee on Education and the Workforce, September 30, 2004.
[11] Cohen. [*Gissel Packing*, 395 U.S. at 602.].
[12] Cohen. *NLRB v. Flomatic Corp*., 347 F.2nd 74, 78 (2d Cir. 1965).
[13] Cohen. *NLRB v S.S. Logan Packing Co.*, 386 F.2nd 562 (4th Cir. 1967).

Employee safeguards built into the National Labor Relations Act

The NLRA provides certain rights to employees and employers, the violation of which are considered to be "unfair labor practices." Section 7 of the NLRA explicitly gives employees the "right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their choosing."[14] Section 7 also gives employees "the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment" authorized under Section 8 of the NLRA.[15] Section 8 of the NLRA makes it an unfair labor practice for either an employer or a labor union to interfere with, restrain, or coerce employees in the exercise of their rights guaranteed under Section 7.[16]

The intent of Sections 7 and 8 of the NRLA is to prohibit any employer or union from encroaching on employee free choice in the decision of whether or not to be represented by a labor union. Other provisions in the act allow the NLRB to issue cease-and-desist orders to stop unfair labor practices and to order remedies for violations of unfair labor practices.[17] While the act is not a criminal statute, the Board is authorized by Section 10(c) not only to issue a cease-and-desist order, but "to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act."[18]

Threats to Employee Democracy

As fewer employees have chosen unions via the traditional secret-ballot election, organized labor has adopted a new tactic – card-check organizing. To improve their chances of organizing new employees, card-check authorization usually is sought with "neutrality agreements," and sometimes combined with "corporate campaigns." Employee democracy, which is made available by the secret-ballot election, is being threatened by organized labor's aggressive use of these organizing tactics. These tools are used in various combinations in an attempt to surrender an employee's right to a secret-ballot election.[19]

Neutrality Agreement

One area of increasing concern in union organizing campaigns (the union effort to organize workers) is the use of the "neutrality agreement." Neutrality agreements come in a variety of forms. They most commonly refer to "an employer agreeing to remain neutral during a union organizing campaign." In some agreements, the employer may agree to accept the union if it produces signed authorization cards from a majority of employees. In many cases, the agreement includes other provisions that are designed to facilitate the union's organizing

[14] 29 U.S.C. Sec. 157.
[15] 29 U.S.C. Sec. 157.
[16] 29 U.S.C. Sec. 158.
[17] CRS.
[18] National Labor Relations Board, "Basic Guide to the National Labor Relations Act," 1997. [http://www.nlrb.gov/nlrb/shared_files/brochures/basicguide.pdf]
[19] Cohen.

campaign.[20] Such provisions include an agreement by employers to provide the union with a list of names and addresses of employees; an agreement to allow the union access to the worksite to distribute materials and speak with employees; and limitations or a "gag order" on employer communications with employees about the union.[21] Unions are attracted to neutrality agreements because they have found that their success rate is even greater when a card check campaign is combined with a neutrality agreement.[22] Unions strongly prefer neutrality agreements because they allow them to persuade employees to support a union in the absence of opposition from employers.[23]

On the critical issue of union representation, employers should not be allowed to substitute their own judgment for that of their employees.[24] Neutrality agreements allow an employer to negotiate with a union before it has demonstrated any support among workers. In effect, they permit an employer to collude with union officials and effectively choose a union for the workers.[25] Neutrality agreements undercut the right of workers to decide whether or not to allow a union to represent them.

Two cases are pending before the NLRB in which the Board has signaled its suspicions about card-check recognition. In both cases, the employers signed neutrality agreements that allowed for card-check authorization. In the consolidated matter *Dana Corp.* and *Metaldyne Corp.*,[26] "the board agreed to review two cases in which employees sought to decertify a union just weeks after the employer voluntarily recognized the union pursuant to a card check agreement."[27] With regard to these cases, the Board stated, "We believe that the increased usage of recognition agreements, the varying contexts in which a recognition agreement can be reached, the superiority of Board supervised secret ballot elections, and the importance of Section 7 rights of employees, are all factors which warrant a critical look at the issues raised."[28] It is anticipated the NLRB will rule on this matter during 2006.

Corporate Campaigns

Another threat to the right of employees to choose freely whether or not to be represented by a union is the "corporate campaign." This is a strategy conducted by a union intended to exert pressure on an employer to undermine its relationships with key stakeholders so that the employer will yield to the union.[29] A "corporate campaign" may include calls (either directly or indirectly from the union) for consumers to boycott an employer; rallies and picketing against an employer; a public relations campaign; legislative initiatives; charges that the employer has

[20] Cohen.
[21] Cohen.
[22] CRS.
[23] Richard M. Reice and Christopher Berner, "Unions Favor Card Check Recognition in Organizing," The National Law Journal, January 10, 2005.
[24] Yager.
[25] Kersey.
[26] 341 NLRB No. 150 (June 7, 2004)
[27] Reice and Berner.
[28] Reice and Berner.
[29] Jarol B. Manheim, Professor of Media and Public Affairs and Political Science at The George Washington University, in testimony before the House Subcommittee on Workforce Protections of the Committee on Education and the Workforce, July 23, 2002.

violated labor or other laws; public support from political, civic and religious leaders, among other strategies.[30] Put another way, "a corporate campaign is an organized assault – involving economic, political, legal, regulatory and psychological warfare – on a company that has offended a labor union or some other group. The attack usually centers around the media, where the protagonists attempt to redefine the image – and usually tarnish the reputation – of the target company until it yields on whatever the issue in dispute might be."[31]

With regard to a union's effort to gain new union members, the corporate campaign recognizes that there are things that companies fear more than unionization of their workforce, such as loss of customers, loss of financing or insurance, and overly zealous regulators and media.[32] One union official explained their strategy against a grocery concern as "putting enough pressure on employers, costing them enough time, energy and money to either *eliminate them* or get them to surrender to the union."[33]

A good example of such an organized effort is the union pressure currently being placed on Wal-Mart. According to the Campaign for America's Future, a labor-backed group, "there's going to be a concerted effort over the next few months to go after Wal-Mart."[34] The plan is to put pressure on Wal-Mart "in every conceivable way," according to the United Food and Commercial Workers Union.[35] The corporate campaign includes fighting the opening of new Wal-Mart stores, pushing state and local governments to pass laws specifically aimed at Wal-Mart, and encouraging class action lawsuits against the company.[36]

Professor Jarol Manheim, a leading scholar on corporate campaigns, refers to the strategy being waged against Sutter Health, a major West Coast hospital company, as an example of a corporate campaign. Local 250 of the Service Employees International Union has kept pressure on Sutter Health with continual negative media stories as part of a unionization drive for nearly ten years.[37] This is Professor Manheim's description of the ongoing campaign against Sutter Health:

> Over the course of the last several years, Sutter has been drawn at the union's initiative into proceedings with the Internal Revenue Service (audit of alleged violations of nonprofit status and union allegations of tax fraud), Department of Defense (investigation of billing practices), Department of Health and Human Services (investigation of billing practices), Health Care Finance Administration (allegations of Medicare fraud), Federal Trade Commission (antitrust investigation of a proposed merger) and the National Labor Relations Board (multiple unfair labor practice claims), as well as more than a dozen state and local legislative and regulatory proceedings on

[30] CRS.
[31] Manheim.
[32] Manheim.
[33] Yager.
[34] Sean Higgins, "Liberal Activists Unite to Fight Wal-Mart with Nationwide Efforts at Local Level; Being No. 1 has a Downside,"
[35] Higgins.
[36] Higgins.
[37] Bureau of National Affairs; Daily Labor Report, "Nurses Hold Two-Day Strike Against Kaiser, While SEIU Local 250 Walks Out on Sutter," July 18, 1997.

> matters ranging from alleged campaign spending violations to licensing proceedings and the issuance of state healthcare contracts. More often than not, the agencies in question have sided with the company, but that does not mean the campaign has been unsuccessful – at least in its intermediate goals of claiming the attention of Sutter's management and forcing the company to go to extraordinary lengths to justify and defend virtually every action that it takes.[38]

Clearly, mounting a sustained defense against such an assault can prove costly to a company on a variety of levels. For the unions, however, the results are clear. Unions say they organize three or four times as many workers through the corporate campaign and card-check authorization as through secret-ballot elections.[39]

Increasing Union Membership at the Expense of Employee Choice

Unions argue in favor of greater use of the card-check authorization by maintaining that the traditional secret-ballot election involving the NLRB is broken. According to the AFL-CIO, "the NLRB election process is easily manipulated by employers to create delays of months and even years."[40] However, the Summary of Operations for Fiscal Year 2005 from the Office of the General Counsel at the NLRB tells a different story. Initial elections in union representation elections were conducted in a median of 38 days. Over 94 percent of such elections were conducted within 56 days. Both figures bested results from the prior year.[41]

Unions also argue that card-check authorization is necessary because employers routinely engage in unlawful activities that dissipate their majority support by the time of the election. In testimony before Congress, an attorney with the international union UNITE HERE stated that "the usual NLRB election is poisoned by employer coercion."[42] This argument ignores the host of remedial tools the NLRB has at its disposal. The Board already has the ability to prosecute employers who engage in unlawful activity that interferes with an employee's right to form a union. Furthermore, the Supreme Court granted the NLRB a potent weapon to counteract unfair labor practices in the *Gissel Packing Co.* decision. Under *Gissel*, "the NLRB may impose a duty to bargain on the employer despite a union loss in a board-certified election. The remedy is available to the NLRB in situations in which a union has received a majority of valid authorization cards and in which the employer's unfair labor practices are so pervasive that there is little or no possibility of holding a fair election at any point in the immediate future.[43]

---

[38] Manheim.
[39] The Washington Times, op-ed by Rick Berman, "The AFL-CIO Sweatshop," February 16, 2006.
[40] AFL-CIO, "The Employee Free Choice Act Will Guarantee Employee Free Choice Through Democratic Majority Sign-Up Procedures," April 2005.
[41] Arthur F. Rosenfeld, Acting General Counsel of the National Labor Relations Board, "Summary of Operations Fiscal Year 2005, November 28, 2005.
[42] Brent Garren, Senior Associate General Counsel of UNITE HERE, in testimony before the House Subcommittee on Employer-Employee Relations of the Committee on Education and the Workforce, September 30, 2004.
[43] Gil A. Abramson, "The Uncertain Fate of *Gissel* Bargaining Orders in the Circuit Courts of Appeal," The Labor Lawyer, Summer 2002: 121-136.

It is more likely that the motivating force behind corporate campaigns and neutrality and card check agreements is the steady decline in union membership among private-sector workers.[44] Declining union membership also means declining union resources and authority.

In 2005, 12.5 percent of wage-and-salary workers (public and private) were union members. The rate for private-sector workers was only 7.8 percent. Until 2005, when the rate held steady, these numbers had been showing steady declines. According to the Bureau of Labor Statistics, union membership has been steadily declining from its high of 20.1 percent among all workers (public and private) in 1983.[45]

Without a means to remove the protections given to employees with the secret-ballot election, the prospects are bleak for organized labor. According to a 2005 Zogby International survey, only 35 percent of non-union workers said they would consider voting to be organized, while 56 percent said they would not.[46] Even among union members, only 27 percent said the AFL-CIO spoke for them all or most of the time.[47]

Labor attorneys who follow organizing campaigns note that decades of federal and state legislation in the areas of occupational health and safety, civil rights, workers' compensation, wage and hour protection and plant closings have supplanted the role of unions so that now unions struggle to be seen as relevant.[48] In fact, 39 percent of private-sector workers "believe that while organized labor may have once been needed, its time has passed."[49] The ongoing turmoil within organized labor, resulting in three of the largest affiliates of the AFL-CIO leaving the federation in 2005, and another announcing plans in February 2006 to leave, the labor movement seems in danger of becoming politically irrelevant. The decline in membership and influence has become so acute that Service Employees International Union Executive Vice President Gerry Hudson warned fellow labor leaders, "We have a labor movement dangerously close to being too small to matter."[50]

Results of New Organizing Tactics

Although there is little available research comparing the impact of card-check authorization to secret-ballot elections, the research that has been done "suggests that the union success rate is greater with card check recognition than with secret ballots."[51] One study, published in 2001, looked at 57 card-check agreements involving 294 organizing drives. The study found that the unions had a success rate of 78.2 percent in drives where there was both a

[44] Cohen.
[45] Bureau of Labor Statistics, "Union Members in 2005," January 20, 2006. http://www.bls.gov/news.release/union2.nr0.htm
[46] Zogby International, "Just One-in-Three Workers Would Consider Unionizing; Seven-in-Ten Content with Jobs – New Zogby/Public Service Research Foundation Poll," July 22, 2005.
[47] The Wall Street Journal, op-ed by John Zogby, "Disorganized Labor," August 9, 2005.
[48] Reice and Berner.
[49] Zogby.
[50] The Washington Post, "For Labor, Tough Choices," December 15, 2004.
[51] CRS.

card check agreement and a neutrality agreement, and a 62.5 percent union success rate in drives where only a card check agreement was used.[52]

Another study, conducted in 1999 by the AFL-CIO's George Meany Center for Labor Studies, found similar results. This study looked at union organizing under 114 card-check agreements and found that unions succeeded in 78 percent of the campaigns where they used card-check authorization. These results compare to a union success rate of 48 percent in that year when a secret-ballot election was conducted. Furthermore, the study found a union success rate of 86 percent when employer neutrality was combined with card-check authorization.[53]

While organized labor has found success with the card-check and neutrality agreements in the United States, it is a slow process that works best in situations where unions already have significant bargaining power. Seeking additional leverage, organized labor has turned to Congress for help.[54] In fact, union bosses have made card-check authorization "a key issue in the 2006 and 2008 national elections."[55]

In turning toward Congress, organized labor and their supporters point to Canada as a successful model for union organizing. "American unions hope that the labor landscape will begin to look more like that of Canada, where card check recognition is standard and the percentage of unionized employees is between 32 percent and 35 percent."[56] Federal labor laws in Canada *require* union certification upon a showing of signed authorization cards from a majority of employees.[57] Under this system, the union success rate in Canada was 91 percent.[58]

Kennedy Bill Crushes Employee Choice

In response, Senator Ted Kennedy and Representative George Miller have introduced the "Employee Free Choice Act." Their companion bills, S. 842 and H.R. 1696, would require the NLRB to certify a union (*and prohibit a secret-ballot election*) if presented with signed authorization cards from a majority of employees that the union is seeking to organize.

The bill also establishes procedures for reaching an initial contract agreement. Should the union and the employer not reach an agreement within 90 days after certification (or a longer period if agreed to by both parties), a request by either party can be made of the Federal Mediation and Conciliation Service (FMCS) to intervene. Disputes that cannot be settled by the FMCS would then go to binding arbitration. Under the bill, the arbitration panel is to render a

---

[52] CRS.
[53] Yager.
[54] Reice and Berner.
[55] Bureau of National Affairs' Daily Labor Report, "Labor to Mobilize Thousands in Support of Workers' Right to Form Unions, Bargain," December 6, 2005.
[56] Reice and Berner.
[57] AFL-CIO, "Guaranteeing Employee Free Choice Through Democratic 'Card-Check' Procedures," http://www.aflcio.org/joinaunion/voiceatwork/upload/EFCAcardcheck.pdf.
[58] CRS. Note: In British Columbia, card-check authorization was allowed until 1984. From 1984 until 1992, union certification required a secret-ballot election. Card-check authorization was again permitted after 1992. The calculation of the union success rate under card-check authorization was determining by looking at the success rate for the five years before and the six years after voting was mandatory.

decision settling the dispute that is binding upon both parties for two years, unless a different length of time is agreed to by both parties.[59]

The Kennedy bill is the wrong solution because card-check authorization is inherently unreliable. Unlike a secret-ballot election, union authorization cards are signed in the presence of an interested party – a pro-union co-worker or a union organizer. The absence of the neutral NLRB has "resulted in deceptions, coercion, and other abuses over the years."[60] One example is the *HCF, Inc. d/b/a Shawnee Manor* case brought before the NLRB in 1996. In this instance, "an employee testified that a co-employee soliciting signatures on union authorization cards threatened that, if she refused to sign, 'the union would come and get her children and it would also slash her tires.' "[61]

Authorization cards overstate union support. Workers will sometimes sign union authorization cards not because they intend to vote for the union but to avoid offending the person who asks them to sign, often a fellow co-worker.[62] Employees may sign authorization cards to avoid union coercion, a possibility that increases under a neutrality agreement when the union has personal information about the employees, including their home addresses.[63] Unions are aware of the fact that signed authorization cards overstate support for joining a union. Unions generally file petitions with the NLRB when they have signed authorization cards from approximately 60 to 70 percent of the employees since "union support is at its peak when a petition is filed and then dissipates closer to election day."[64]

The Kennedy bill conflicts with the underlying principles of the NLRA. This statute gives workers the ability to form a union and to bargain collectively over wages and working conditions. The intent of the NLRA was to give workers a collective voice with management.[65] However, the Kennedy bill goes against the core principles and entire history of collective bargaining by taking an initial collective bargaining agreement out of the hands of the employer and the union and requiring that it be submitted to binding arbitration.

The traditional, secret-ballot election is preferred. The secret-ballot election is the fairest way to guarantee the rights of employees to freely choose whether or not to be represented by a union. It allows for a private, confidential vote by employees, based on principles of the American system of democracy.

Secret Ballot Leaves Unionization Decision with Employees

Fortunately, support for the secret-ballot election remains strong. Union members agree. In 2004, Zogby International for the Mackinac Center for Public Policy surveyed union members nationwide. The survey found that the majority of union members (53 percent) state the fairest

[59] CRS.
[60] HRPA.
[61] Yager.
[62] Cohen.
[63] Kersey.
[64] Alan Model, Attorney with Grotta, Glassman & Hoffman, P.C., "What All Employers Should Know About Union Authorization Cards," 2005.
[65] CRS.

way to decide on a union is for "the government [to] hold a secret-ballot election and keep the workers' decisions private."[66] In the same survey, 71 percent of union members agreed that the current secret-ballot process is fair. The survey also found that 84 percent of union workers stated that workers should have the right to vote on whether or not they wish to belong to a union, 63 percent agreed that stronger laws are needed to protect the existing secret-ballot process, and 78 percent said Congress should keep the existing secret-ballot election process for union membership and not replace it with another process.

In fact, support for the secret-ballot election is so strong, some in Congress believe it should be made mandatory for the determination of union representation. Senator Jim DeMint and Representative Charlie Norwood have introduced the "Secret Ballot Protection Act" (S. 1173 and H.R. 874). These bills would require a secret-ballot election to determine union authorization. The bill would make it an unfair labor practice for an employer to recognize or bargain with a union that has not been selected by a majority of employees in a secret-ballot election conducted by the NLRB. It would also make it an unfair labor practice for a union to attempt to cause an employer to recognize or bargain with a union that has not been chosen in a secret-ballot election.[67]

Ironically, some House Democrats who support card-check authorization in the United States support the use of the secret ballot in other countries. A letter sent by Rep. George Miller and 15 other members of Congress to Mexican government officials stated, "We understand that the secret ballot is allowed for, but not required, by Mexican labor law. However, we feel that the secret ballot is absolutely necessary in order to ensure that workers are not intimated into voting for a union they might not otherwise choose."[68] The letter followed a labor dispute at a facility in Mexico subsequent to efforts by workers to affiliate with an independent union rather than the traditional union.[69]

Even the AFL-CIO has expressed support for secret-ballot elections. It argued before the NLRB that in decertification petitions (the process by which it is determined a union no longer represents a majority of the employees), secret-ballot elections "provide the surest means of avoiding decisions which are the results of group pressures and not individual choices."[70] If the secret-ballot election is the "surest means" to determine whether employees want to decertify a union, it must also be the surest means to certify union representation.

---

[66] Mackinac Center for Public Policy, "Checking the Premises of 'Card Check': A Nationwide Survey of Union Members and Their Views on Labor Unions," July 20, 2004.
[67] CRS.
[68] George Miller, Marcy Kaptur, Bernard Sanders, William Coyne, Lane Evans, Bob Filner, Martin Olav Sabo, Barney Frank, Joe Baca, Zoe Lofgren, Dennis Kucinich, Calvin Dooley, Fortney Pete Stark, Barbara Lee, James McGovern and Lloyd Doggett, Members of Congress, Letter to Junta Local de Conciliacion y Arbitraje del Estado de Puebla, August 29, 2001.
[69] Bureau of National Affairs; Daily Labor Report, "Congressional Representatives Push Mexico to Require Secret Ballots in Union Elections,: August 31, 2001.
[70] U.S. Chamber of Commerce, "The Secret Ballot Protection Act: Reduce Coercion in Union Organizing; Protect Employee Privacy," 2005. See:
http://www.secretballotprotection.com/NR/rdonlyres/enio7vmjn6soib43gcm7pm7mk2p2q3rfy3atv7l6hep24w3zzmb4dhzclsglpjz6frb5oc72mzqqb7m7lwvpoa26wyc/SecretBallotProtectionActPolicyPaperPDF.pdf.

Conclusion

The continuing slide in organized labor's market share – down to 8 percent of private-sector workers – has generated a strong push by organized labor for card-check recognition. Unions have found organizing success with card-check recognition, and even greater success when it is combined with a neutrality agreement and a corporate campaign. Senator Kennedy's legislation would give unions greater, unwarranted leverage. The secret-ballot election is an essential part of American democracy. It guarantees confidentiality and protection against coercion, threats, peer pressure, and improper solicitations and inducements. Although the prospect for union growth continues to appear bleak, the law should not be changed simply to ensure union victories.